The State of Rajasthan & Ors vs. Shri Swami Vishokanand Bharti & Anr.

SB Civil 1st Appeal No.61/1986

Date of Order: 05th January, 2007

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.N.M.Lodha, Addl.Advocate General.
Mr.Suresh Shrimali for the respondent/s.

BY THE COURT:-

Heard learned counsel for the parties.

This appeal arises out of the decision of the Addl.District Judge, Bikaner in a suit filed by Swami Someshwaranand as Chairman of Sri Dhuninath Guruji's Public Trust, Bikaner. The suit was filed for declaration and injunction and recovery of amounts. Following issues were framed :

"1- क्या बीकानेर स्थित पंच मंदिर मुतदाविया को महाराजा सूरत सिंह जी बीकानेर नरेश ने बनवाया था ?

2- क्या पंच मंदिर बीकानेर राजकीय मंदिर हैं ?

3- क्या यह पंच मंदिर बीकानेर राज्य की व्यवस्था और प्रबंध में था ?

4- क्या इस मंदिर का कुल खर्चा बीकानेर राज्य सरकार चलाती थी ?

5- क्या यह तमाम जायदाद जिसके पट्टे पंच मंदिर धूनी नाथ जी उर्फ धनी नाथ जी के नाम से हैं ? बीकानेर राज्य की अचल सम्पदा थी और बीकानेर राज्य सरकार में निहित थी ?

6- क्या श्री धनीनाथ गिरी जी सार्वजनिक प्रन्यास गैर कानूनी होने से नाकिस, प्रभाव हीन हैं ?

7- क्या अस्सिटेंट कमीश्नर देवस्थान जोधपुर को कन्डीशनल रजिस्ट्रेशन करने का अधिकार था ?

8- क्या कमीश्नर देवस्थान का हुक्म तारीख 17.7.79 कि यह जांच की जावे कि पंच मंदिर बीकानेर राजकीय मंदिर हैं, राजस्थान सार्वजनिक प्रन्यास अधिनियम सन् 1958 की धारा 24 व 18 (2) के अनुसार जांच की जावे- अवैध हैं ?

9- क्या अस्सिटेंट कमीश्नर देवस्थान की ता. 30.12.1965 की यह फाइंडिंग की यह राजकीय अर्थात डायरेक्ट चार्ज का मंदिर होना साबित नहीं होता, अब रेस ज्यूडिकेटा के सिद्धान्त के कारण इस विषय में दुबारा जांच नहीं की जा सकती हैं?

10- क्या अस्सिटेंट कमीश्नर देवस्थान की उक्त एक्ट सन् 1959 की दफा 19 के नीचे दी हुई ता. 30.12.1965 की फाइंडिंग अंतिम अवस्था(फाईनल) प्राप्त कर चुकी हैं। अत: स्टोपल के सिद्धान्त के कारण दुबारा जांच नहीं की जा सकती ?

11- क्या राजस्थान स्टेट यह स्वीकार करक चुका हैं कि यह पंच मंदिर और मठ सरकारी सम्पति नहीं हैं। अत: एक दफा मंजूर करने के बाद वह अपना निर्णय बदल नहीं सकती ?

12- क्या यह निर्णय करना कि सम्पति मुतदाविया पंच

मंदिर बीकानेर की हैं या राजस्थान स्टेट की, इस अदालत के क्षेत्राधिकार में नहीं हैं ?

13- क्या राजस्थान सरकार पंच मंदिर बीकानेर को उसकी जागीर गांव कुजटी और कपूरीसर के मुआवजे के हिस्से की एवज में जो रकम अब दावा के पैरा नं. 13 व 14 में दर्ज हैं, देती हैं, वह रकम आयंदा चालू रखने की अधिकारी नहीं हैं ?

14- क्या सहायक आयुक्त देवस्थान जोधपुर की ता. 7.12.1976 को जायदाद मुन्दर्जा पैरा 15 के बेचने की बाबत दी हुई स्वीकृति को उपरोक्त सहायक निदेशक के तार 5.8.1977 व देवस्थान कमीश्नर के हुक्म ता. 17.7.79 से नहीं बदला जा सकता क्योंकि यह दोनों हुक्म नाकिस, प्रभाव हीन, सारहीन (वायड) हैं ?

15- क्या इस दावे में कोर्ट फीस कम दी गयी हैं ?

16- क्या दावा अंदर मियाद नहीं हैं ?

17- क्या यह दावा महंत श्री सामेश्वरानंद भारती ने व्यक्तिगत हैसियत से किया हैं ? अत: नहीं चल सकता ?

18- क्या मुदई अर्जीदावा में वर्णित दादरसी (रिलीफ) पाने व डिक्री पाने का अधिकारी हैं ?"

While deciding issue No.1,2,3,4 and 5 the trial court has come to the conclusion that the respondents in their claim have based the case on a document published in a case in 1899 in the Central Jail, Bikaner Press. A list was got prepared by Maharaja Shri Bheron Singhji Saheb. He got this prepared under what circumstances and in what manner has not been established.

Whether there is any order to prepare the list is not established on record. The trial court has come to the conclusion that merely because it has been published by the Central Jail, Bikaner it cannot be said to be document pertains to the Government functioning. An Urdu book has been filed on record which is a private publication yet published by the Govt. Press. No original of Ex.A/1 has been filed . There are no witnesses who have ever seen the original of this document. Apart from this, the trial court has given consideration to the fact that the State Government has not been maintaining this temple . Only Rs. 1800/- were used to be paid to the Poojari whereas the temple expenses were to the tune of Rs.9500/-.P.A. There is a stone inscription ('Shila Lekh') which recites that during the time of Maharaj Shri Surat Singhji , the temple was constructed by Shri Dhuni Nathji. In a history book that pertains to the history of Bikaner, it has been noticed that the temple has been constructed by Dhuninathji during the life time of Maharaja Surat Singh which is known as Panch Mandir, which is the temple in dispute. The then Devasthan Commissioner who was the master of ceremony in the Bikaner State has deposed that the temple was not directly managed by the State though some grant was given to it and thus, issue Nos.1 and 2 were decided against the respondents.

Issue No.3 which related to the Management has also been decided against the respondents because there was evidence on record that the King of the State of Bikaner who used to consider the Mahant of this temple as his 'Guru' has deposed that the management was with the Mahant of the temple. The temples were constructed by the State to acquire the good will and not to acquire rights over the property.

Even after the cessation of the State of Bikaner, for the first time the Devasthan Department has made Budgetary Notification for the temple in the year 1979. Thus, it has been held by the trial court that the mandir was managed by the disciples of Dhuninathji. Further by simply giving some amount for the maintenance of the temple it cannot be said that the temple is owned by the State Government because by that time the State used to give grant to many temples. The writing on the copper plate which is available on record states that the property has been dedicated to Dhuninathji and progeny of the King will not interfere with it. The progeny of the King meant its successors also. The property belonged to the Trust which is the successors of Dhuninathji and in that view of the matte,r the trial court decreed the suit in terms that the temple was owned by Dhuninathji which later on vested in the

Trust and the temple is not dependent on the State.

The learned counsel appearing for the State has submitted that the findings are not based on any cogent evidence and is exclusively based on Ex.A/1 which has not been considered by the trial court. Except Ex. A/1, there is nothing on record to show that the State ever owned it. This document has been held to be not proved in the light that its origin has not been established. The overwhelming evidence which has been relied on by the trial court in the shape of evidence of Devasthan Commissioner , the master of ceremonies, state unequivocally that the property belonged to Shri Dhuninathji which was created by Dhuninathji and its successors have a right on it and the property has been vested in the State . That being the position, the finding on the issue is not liable to be disturbed. In that view of the matter the decree is not liable to be disturbed.

There is no force in the appeal, the appeal is dismissed.

(BHAGWATI PRASAD), J.

L.George